UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

THE CHAMPLIN COMPANY

AND **CASE 34-CA-9635**

NOEL RIVERA, AN INDIVIDUAL

Patrick Daly Esq., Counsel for the
General Counsel
Patrick J. McHale Esq., Counsel for the
Respondent

DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case on April 23, 2003 in Hartford, Connecticut. The charge and amended charges were filed on April 1, June 15, 2001 and January 22, 2003. The Complaint was issued on January 29, 2003 and alleged the Respondent on various days in December through April 2001, took retaliatory disciplinary actions against Rivera because (1) he engaged in protected concerted activity on November 21, 2000, and (2) filed a grievance on December 8, 2000 under the collective bargaining agreement between the Respondent and Capital City Lodge 354, District 710, I.A.M.A.W.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following:

Findings and Conclusions

I Jurisdiction

It is admitted that the Employer is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II Alleged Unfair Labor Practices

The Company is engaged in making wooden and cardboard containers. The production employees were represented by Capital City Lodge #354, District #710, I.A.M. and A.W. until decertified in February 2001. About a half of the Company's 27 employees are production employees.

Noel Rivera, the charging party, was hired as a utility worker on September 5, 2000. As part of the Company's normal practice, he was to be rotated to learn how to do the various different functions of the plant. Initially, he was assigned to build boxes and then, after a couple

of weeks, was assigned to work on a CNC machine. Thereafter, on November 17, 2000, he was transferred to the box department. He was supervised, at various times, by his uncle, Blas Soto.

On November 21, 2000, Orlando Alvarado, a shipping supervisor, was assigned to operate a forklift because one of the two regular employees who normally did that work was not available. Rivera and several employees had come in early to work that morning because there was a big order that had to be filled that day. Alvarado was using the forklift to bring boxes from the department to the loading dock.

At one point in the morning, Rivera shouted over to Alvarado that it was a violation of the contract for him to be driving the forklift and that he should stop. Rivera then left his own work area to approach Alvarado where he told the latter that that he shouldn't be operating the fork lift because it was a violation of the Union contract. According to Rivera, Alvarado responded that it was done all the time, and that he told Alvarado that even though that may be the case, it's still a violation of our Union contract for a supervisor to be doing our work.

In connection with this incident, the evidence is that the entire incident took about 2 to 4 minutes at most. Also, the evidence does not indicate that Rivera threatened Alvarado or otherwise used any profane language. To the extent that a few other employees such as George Betancourt, may have stopped working to watch, the interruption was fleeting. As far as Alvarado was concerned, he listened and responded to Rivera and then continued to operate the forklift.

As far as Rivera's contention that Alvarado was breaching the contract, that contention was probably wrong as it is not a violation for a supervisor to do bargaining unit work where an employee normally assigned to the work is not available. The contract at Article 4.2 reads:

> No employee outside the bargaining unit will be permitted to perform production work usually done by those in the bargaining unit, which will cause the loss of overtime by or layoff/or layoff recall of employees. This is not to prevent such a person from filling in voids caused by absenteeism or tardiness or from normal instruction or emergency situations. It is not the intent that supervisors do bargaining unit work.

About ten minutes later, Mike Mahoney called Rivera to the office where he told Rivera that he should not have told Alvarado to stop operating the fork lift; that if he felt that there was a contract breach, the proper procedure would be for Rivera to first talk to his own supervisor and then talk to Mahoney and if there was still a problem to file a grievance with the Union. It is noted that Rivera, who at that time was employed for about a month, although claiming a breach of the collective bargaining agreement, did not think it advisable to talk to the union shop steward before telling Alvarado that he should get off the fork lift.

At the time of that incident, Rivera did not receive a warning. However, Mahoney did testify that he was angry that an employee was telling a supervisor what to do and that Rivera was disrupting the work forced by leaving his work station without permission and not handling the situation in the way he was supposed to do.

On December 8, 2000, Rivera filed a grievance with the Union contending that the

Company transferred him from the CNC machine in retaliation for his attempt to enforce the union contract on November 21, 2000. This grievance, on its face, had no merit because the transfer that took place on November 17, took place *before* the forklift incident, which occurred on November 21.

The General Counsel contends that the Company, in response to Rivera's December 8 grievance, threatened to retaliate against him. In this respect, the credited evidence is that Mahoney met with Rivera in the presence of a shop steward to discuss the grievance. During this discussion, which I think Rivera either misunderstood or misreported, Mahoney stated that he had to meet with Rivera even without the shop steward in order to meet the contract's time deadlines; that he wasn't sure if it was a proper grievance because it was not signed by the shop steward; that he thought that Rivera's contention was false, (which it was); and that he, (Mahoney), was going to refer it to the Company's attorney. In short, the credited evidence indicates that Mahoney conducted a normal step 2 meeting as per the grievance procedure and that he did not threaten to retaliate against Rivera for filing the grievance. [1]

On December 28, 2001, Rivera received a written warning from plant manager Mahoney that stated:

> Your disruptive behavior and leaving your work station without permission on Tuesday, November 21, 2000 resulted in a meeting with your supervisors and the union committee representative. In this meeting you were reminded how to properly handle your concerns with management and that future instances of disruptive behavior or leaving your work area without permission would result in disciplinary action.
>
> On Thursday December 28, 2000 you stated to your supervisors and the union committee representative that you had destroyed and disposed of company property without permission. Earlier when we attempted to direct you to the area of the missing company property you became disruptive by refusing to follow our repeated direction and walked away. You had no authorization to be in this area.
>
> Please be warned that any future instances of disruptive behavior, leaving you work area without permission, or destruction of company property will result in the termination of your employment.

With respect to this warning, about which Rivera filed a grievance, the precipitating event apparently was the fact that Rivera had made and then disposed of some dividers, which he used to separate drill bits in the CNC toolbox. These dividers were made from excess foam that otherwise would have been thrown away as trash. Rivera, for whatever reason, decided to return the foam dividers to the trash bin after he had been transferred from the CNC machine. It

[1] I note that the Company contends that Rivera, while operating the CNC machine, had a bad habit of changing the programming instructions, which interfered with its proper operations. Although denying that he did so, Rivera concedes that Blas Soto, his uncle and supervisor, did in fact, tell him on several occasions, not to reprogram the machine.

seems that when Mahoney questioned him about this, Rivera first ignored Mahoney and then started to walk away from him. This response seems to have infuriated Mahoney, who viewed this as insubordination. This led him to issue the warning on December 28.

Whether or not the warning was warranted for Rivera's behavior *vis a vis* the dividers, the fact is that the warning recited the earlier incident involving the forklift. And although Rivera had not received a previous warning regarding that incident, the Company now cited it as a factor in the December 28 warning. Therefore, if Rivera's actions in the former incident constituted protected concerted activity, then the December 28 warning, to the extent that it relied on that conduct, would be motivated, at least in part, by the earlier event.

On January 2, 2001, Rivera filed a grievance with respect to the December 28 warning.

On January 4, 2001, the Union sent the Company a written notice to the effect that it had selected Rivera to be one of the Union's committeemen.

According to Mahoney, Rivera was involved in another incident with a supervisor in January 2001. He testified that on one occasion after Rivera had come in late and saw the supervisor with his time card, Rivera yelled at the supervisor to not touch his time card. Mahoney testified that Rivera was very upset and wouldn't stop even after he told Rivera to go back to his work station. Finally, according to Mahoney, he told the shop steward to tell Rivera that unless he went back to work, Rivera would be fired on the spot for insubordination. At that point, according to Mahoney, Rivera calmed down. This event did not, however, lead to any written warning and Mahoney explained that he did not discipline Rivera because there was an election pending in the decertification case. (Rivera did not deny the substance of this incident).

Mahoney also testified that on or about February 7, 2001, he was asked by Soto to come to the shop floor because Rivera refused to complete some paperwork. According to Mahoney he told Rivera to do the work and that if he had to come down to the floor again, he was going to fire Rivera. There was, however, no written warning issued to Rivera regarding this incident.

On March 14, 2001, Rivera asked his uncle and supervisor, Blas Soto, if he could have a leave of absence. Soto told him that he would have to find out. When Soto returned to tell Rivera that his request had been denied, Rivera asked why and Soto said that in the past other employees had taken leaves but had failed to come back at the appointed time. Rivera told Soto that this was unfair and that he would show his airline tickets to verify his return date. He asked Soto to resubmit his request. Soto did and told Rivera that his request was denied.

Rivera claimed that another employee, Andy Rodriguez, was allowed to take a leave of absence at about the same time that the Company denied his request. But Mahoney credibly testified that Rodriguez was not given a leave of absence at all; that he was told that if he left, he would have to resign and then ask to be reemployed upon his return. According to Mahoney, Rodriguez did in fact resign and was later rehired.

Mahoney testified that the Company decided to cease giving leaves of absences to any employees because some abused the practice by taking leaves and not returning on the dates agreed upon. In this regard, Mahoney's testimony is essentially the same as Rivera's, who testified that Blas told him that the Company was denying his request because the practice had

been abused in the past. In short, the evidence shows that the Company's denial of Rivera's leave of absence request was consistent with the Company's existing practice and was not discriminatorily motivated.

Rivera testified that sometime in March 2001, his wife told him that on one occasion she was harassed by an employee while in the parking lot. The harassment, according to Rivera, was that this employee yelled something at her while she was waiting for Rivera in the parking lot.

Rivera also testified that on another occasion, about a month before he was fired, he had a conversation with an employee named Robert Montes wherein he offered to help Montes with respect to having the Company pay medical bills for an injury that occurred at work. (Presumably, since this was, according to Rivera, an on the job injury, it would have been covered by the State's Worker's Compensation laws).

On March 30, 2001, Blas told Mahoney that Rivera was harassing Montes. Mahoney thereupon got together with vice president, Jim Schumacher, and they went to talk to Montes. Mahoney states that Montes said that Rivera had repeatedly urged him to sue the Company over the injury in exchange for Montes helping Rivera's wife sue in relation to her alleged harassment in the parking lot. According to Mahoney, Montes complained about these approaches by Rivera and said that he had asked Rivera to stop. Mahoney states that Montes further stated that he didn't feel comfortable in the lunchroom and that if Rivera did not stop, he thought that there was going to be trouble. In this regard, Mahoney, testified that he interpreted Montes' statement as meaning that there was a possibility of an altercation and so after talking to two or three other employees, who confirmed that Rivera was continuously pressing Montes to sue, he decided to suspend Rivera and get him out of the building.

At about 8 a.m. Mahoney went to talk to Rivera in the lunchroom and took along Soto, Alling, Miguel Ramos and Luis Cruz. Mahoney told Rivera that he had received a complaint that Rivera was harassing another employee and that he was suspending him for two days while the matter was being investigated. Rivera responded by asking who had made the complaint and Mahoney refused to tell him. Rivera asserted that the suspension was bogus.

Mahoney then asked Rivera to leave but Rivera insisted on getting his belongings from his locker. Finally, when Rivera accumulated his stuff and called his wife to tell her to pick him up, he was escorted outside where he stationed himself at the wall of another company's building that abutted the Respondent's parking lot. Rivera says that instead of standing outside the gate at the street, he placed himself in this location to get some shelter from the rain. In any event, a food truck was scheduled to come into the parking lot at about 9:30 a.m. and Mahoney, thinking that Rivera might cause some type of incident, asked Rivera to leave the lot and wait on the street. Rivera refused. Finally, the Company called the police who told Rivera that he had to leave or face arrest. Rivera moved.

After the incidents on March 30, 2001, Mahoney talked to the Company's president who agreed with his decision to discharge Rivera.

By letter dated April 3, 2001, the Company listed its reasons for discharging Rivera as follows:

It has been brought to our attention that you have been harassing a fellow employee. The employee has asked you repeatedly to leave him alone and stop trying to involve him with your issues. Your aggressive approaches have been observed by several witnesses.

On Friday March 30, 2001, you were suspended for two days pending an investigation of the details listed above.

Following the suspension you were asked several times by a supervisor to leave company property, you refused these requests. When I arrived I asked you to leave the property or face disciplinary action. When you again refused to leave I informed you that the police would be called. You told me that you would not leave – call the police. The police were called and escorted you off the property.

In a written warning on December 28, 2000 you were reminded that any future instances of disruptive behavior would result in termination.

Your repeated disruptive behavior has resulted in the termination of your employment.

III Discussion

I have already discussed and decided that the certain allegations of the Complaint have no merit. Thus, I shall recommend that the allegation that the Respondent threatened and retaliated against Rivera because he filed a grievance on December 8, 2000 should be dismissed. I also recommend that the allegation concerning the Respondent's denial of his request for a leave of absence be dismissed.

More troublesome are the allegations regarding the warning on December 28, 2000 and the suspension and discharge in March/April, 2001.

My impression is that Rivera is an individual who has difficulty in dealing with authority and has a somewhat exaggerated sense of his own importance. I also have the impression that Michael Mahoney, the plant manager, has a strong feeling about the propriety of following rules and does not easily accept those who are unwilling to do so. Each, if left to their own devices, would not likely get into trouble. But bringing these two together is fraught with the potential of tension and conflict. Not a good mix.

On November 21, 2000, Rivera, who had been employed for only a month, challenged the right of a company supervisor to use the forklift at a time when Rivera and other employees were engaged in packing a large order. Before making this challenge, Rivera did not consult with the shop steward and Rivera's motivation for doing this is not all clear to me since Orlando Alvarado's use of the forklift did not affect either Rivera or any other employee who was employed that day. Nevertheless, Rivera cited Article 4.2 of the contract. And although Rivera's interpretation of that contract was too narrow, I can't say that there was no colorable basis for his claim that Alvarado should not have been driving the forklift that day.

Therefore, a question here is whether Rivera's actions on November 21, 2000 constituted protected and concerted activity. In this connection, although Rivera acted on his own, his claim that Alvarado was in breach of the contract could be construed as "concerted" action if Rivera's assertion was reasonable and made in good faith. *NLRB v. Interboro Contractors, Inc*., 388 F.2d 495, (2nd Cir. 1967). Thus in *T.A. Byrne Chevrolet,* 303 NLRB No. 37, I stated:

> An employee, even if acting alone, who attempts to enforce provisions contained in a collective bargaining agreement is engaged in protected concerted activity. The theory behind this is that even if acting alone in a particular case, an employee's attempt to enforce a union contract is in furtherance of the concerted activity which involved the making of the contract in the first place. See *NLRB* v. *City Disposal Systems, Inc*., 465 U.S. 822 (l984); *Interboro Contractors, Inc*., l57 NLRB 1295 (l967) enf'd. 388 F.2d 495 (2nd Cir., l967).

Of course, even if the actions of an employee are construed as "concerted" they may lose the protection of the Act if they are disruptive of the work place or otherwise cross a permissible boundary of impropriety. *Atlantic Steel Company*, 245 NLRB 814 (1979), (employee called the foreman a lying son of a bitch). As pointed out in *Atlantic Steel*, the determination of whether an employee's behavior loses the protection of the Act will depend not only on the nature of the conduct but also on where it occurs; whether in the context of a grievance or negotiation meeting or on the plant floor.

Moreover, an employee's actions may cease being protected if, during the course of his or her protest, the actions become insubordinate and/or cause a disruption in the work place. *Carolina Freight Carriers Corp*., 295 NLRB 1080 fn. 1 (1989); *Postal Service*, 282 NLRB 686, 694-95 (1987). Cf. *Felix Industries Inc*., 339 NLRB No. 32 (2003), where the Board, in a majority opinion, held that the Employer illegally discharged an employee who, during a dispute over his pay rate, repeatedly called his foreman a "fucking kid."

In the present case, it is my opinion that Rivera's complaint to Alvarado about driving the forklift, although based on an incorrect claim under the contract, nevertheless had a colorable basis and therefore was protected and concerted. [2] Further, although this incident did not occur in the context of a grievance meeting, but on the plant floor, the evidence is that it took only a few minutes, that it did not disrupt the work being done at the time, and that Rivera's assertion was not accompanied by any threats or profanity. It is true that Rivera did not bring the claim to the shop steward or any other responsible union agent and that the claim would not have affected either himself or any of the other people who had come to work that day. Indeed, I can't help but wonder if Rivera's real motivation was to somehow promote himself in the eyes of his co-workers as the champion of worker rights. (In January 2001, Rivera was appointed to the Union's shop committee).

The Company asserts, however, that it never issued any warning or disciplinary action against Rivera for the forklift incident. But this is not strictly correct because after another

[2] Under the contract, a supervisor could use the forklift in circumstances where the employees normally assigned were not available.

incident that occurred in December 2000, the Respondent did issue a warning to Rivera that, at least to some extent, relied on the forklift incident. Thus, although the proximate cause of the December 28, 2000 warning related to a completely different incident, the warning itself referenced the November 21 incident as an act of insubordination and stated *inter alia*; "Please be warned that any future instances of disruptive behavior, leaving you work area without permission, or destruction of company property will result in the termination of your employment." Therefore, as it is evident that at least some part of the motivation for issuing the December 28, 2000 warning was due to Rivera's actions on November 21, which I have concluded were concerted and protected, I conclude that by issuing this warning, the Respondent violated Section 8(a)(1) of the Act. In this respect, I do not think that the Respondent has demonstrated that it would have issued this warning to Rivera notwithstanding the protected concerted activity.

In January 2001, Rivera was involved in yet another incident. According to the uncontested testimony of Mahoney, Rivera yelled at a supervisor to not touch his time card. Mahoney testified without contradiction that Rivera was very upset and wouldn't stop even after he was told to go back to his work station. Mahoney further testified that he told the shop steward to tell Rivera that unless he went back to work, he would be fired on the spot for insubordination. According to Mahoney, this event did not lead to any written warning and he explained that he did not discipline Rivera because there was an election pending in the decertification case.

Mahoney also testified that on or about February 7, 2001, he had to tell Rivera to complete some paper work and that if he had to come down to the floor again, he was going to fire him. There was, however, no written warning issued to Rivera regarding this incident. On the other hand, Rivera did not deny the incident.

On March 30, 2001, Blas told Mahoney that Rivera was harassing Montes. Upon inquiry, Mahoney discovered that Montes said that Rivera had repeatedly urged him to sue the Company over an injury in exchange for Montes helping Rivera's wife sue in relation to her alleged harassment in the parking lot by another employee. Montes complained about these approaches and stated that he had asked Rivera to cease. According to Mahoney, Montes stated that he didn't feel comfortable in the lunchroom and that if Rivera didn't stop, he thought that there was going to be trouble. Mahoney testified that he interpreted Montes' statement as meaning that there was a possibility of an altercation and decided to suspend Rivera and get him out of the building.

According to Mahoney, Rivera reluctantly left the building and when he finally did, he stationed himself in the parking area where the food truck normally visited at around 9:30 a.m. Maloney testified that he was worried about Rivera causing an incident and that Rivera only left the parking lot after repeatedly ignoring requests to leave and only after the police were summoned.

On April 3, 2001, the Respondent discharged Rivera. The notice of termination asserts that Rivera harassed another employee and had refused to leave the property. The notice then went on to cite the December 28, 2000 warning, which as noted above, made reference to the November 21 fork lift incident.

The General Counsel, for the first time in his brief, argues that Rivera was engaged in concerted activity in March 2001, when he sought to assist Montes in pursuing some kind of legal action against the Company in relation to a job related injury. But in this connection, Rivera was not acting in concert with Montes at all; but rather as an officious interloper. To the extent that Montes may have had a job related injury, that would be covered by the State's Workers Compensation law and as far as we know, Montes had already been the beneficiary of that statute. Clearly, Montes was not interested in acting in concert with Rivera about any such claim and he rejected Rivera's solicitations. Thus, any assistance that Rivera allegedly offered to Montes was not related to any claim that Montes could assert under the terms of the collective bargaining agreement. Rather, it was a claim that might conceivably exist under State law. And individually asserted rights that may exist under State statutes, are not considered concerted activity under the NLRA. *Meyers Industries*, 268 NLRB 493 (1984) rev'd sub nom, *Prill v. NLRB*, 755 F. 2d 941, (C.A. D.C.) cert. denied, 474 US 971 (1985). [3] Moreover, as Montes never sought Rivera's assistance, but instead rejected and complained to the Employer about it, Rivera, in my opinion, was acting on an individual and not a concerted basis. [4]

The General Counsel alternatively argues that whatever the proximate cause of Rivera's discharge, the fact that the termination notice cited the December 28 warning, which in turn had cited the November 21 incident, tainted the entire discharge because the November 21 incident involved activity which was protected and concerted under Section 7 of the Act. Thus, the General Counsel argues for a chain of causation ultimately leading to a conclusion that Rivera's discharge was a violation of the Act. The Respondent, on the other hand, argues that it would have discharged Rivera anyway and notwithstanding the forklift incident.

Pursuant to *Wright Line* 251 NLRB l083, (l980) enf'd. 622 F. 2d. 899, (lst Cir. l98l), cert denied 495 U.S. 989, (1982), approved in *NLRB v. Transportation Management Corp*, 462 U.S. 393, 399-403 (1983), once the General Counsel has established a prima facie showing of unlawful motivation, the burden is shifted to the Respondent to establish that it would have laid off or discharged the employees for good cause despite their union or protected activities.

In *American Gardens Management Company*, 338 NLRB No. 76, (2002), the Board noted that under *Wright Line*, the General Counsel is required to make an initial "showing sufficient to support the inference that protected conduct was a 'motivating factor' in the Employer's decision and if such a showing is made, the burden shifts whereupon the Employer is required to demonstrate that the same action would have taken place even in the absence of the

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[3] This would be unlike *Every Woman's Place*, 282 NLRB 413, (1986), enforced 833 F.2d 1012, 6th Cir. 1987), where the Board held that an employee was engaged in concerted activity when she call the Labor Department to question the Company' holiday pay practices after she and other employees had raised the question of overtime pay with the employer on prior occasions. The Board held that the individual's phone call to a State Agency was an outgrowth of the original protest by all three of the affected employees and therefore was concerted activity.

[4] The complaint alleges that the Respondent suspended and discharged Rivera in retaliation for his protected concerted activity on November 21, 2000 (the forklift incident), and his filing of a grievance on December 8, 2000. The Complaint does not allege, and the General Counsel did not contend during the hearing, that Rivera's offer to assist Montez in a legal claim constituted protected concerted activity as defined in Section 7 of the Act. Nor does the Complaint allege that the Respondent retaliated against Rivera because he was appointed to the union's shop committee. The suggestion that the Respondent took retaliatory action against Rivera because he was appointed to be on the Union's shop committee is rejected because it was not plead in the Complaint and was not supported by any credible evidence.

protected conduct. The Board further stated that in order to meet the initial burden, the General Counsel must establish four elements; (1) the existence of activity protected by the Act; (2) the Employer's knowledge of that activity; (3) the imposition of some adverse employment action; and (4) the existence of a motivational link, or nexus, between the protected activity and the adverse employment action.

The General Counsel makes an intriguing argument. But, at the end of the day, I think that the Respondent should prevail.

Rivera was discharged five months after the forklift incident. And between that time and the time of his discharge, he was involved in a series of other incidents. By the time the final incidents occurred, Rivera's protected concerted activity on November 21, 2000, was well into the past and could not, in my opinion, be more than an insignificant reason for discharging him. In this respect, it is my opinion that the Respondent has shown that the November 21 incident played little if any role in the decision to discharge Rivera on April 3, 2001 and that it has shown that it would have discharged him notwithstanding Rivera's protected activity.

IV Conclusions of Law

1. The Respondent, The Champlin Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, has violated Section 8(a) (1) of the Act by issuing a warning to Noel Rivera on December 28, 2001, in part because he attempted to raise a claim under the collective bargaining agreement on November 21, 2000.

3. Except as herein found, the Respondent has not violated the Act in any other manner encompassed by the Complaint.

4. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having determined that the December 28, 2000 warning was in part motivated by illegal reasons, it is recommended that the Respondent remove this warning from Rivera's personnel file and make no reference to it in the future, including when prospective employers seek a reference from the Respondent regarding Rivera's employment there.

On these findings of fact and conclusions of law and on the entire record, I issue the following conclusions and recommended [5]

ORDER

The Respondent, The Champlin Company, its officers, agents and assigns, shall

1. Cease and desist from

(a) Issuing warnings to employees who engage in protected concerted activity such as seeking to enforce or raise a claim under a collective bargaining agreement in the event that there is one.

(b) In any like or related manner interfering with, restraining or coercing employees in the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remove from its files any reference to the unlawful warning to Noel Rivera and notify the employees in writing that this has been done and that this action will not be used against him in any way.

(b) Within 14 days after service by the Region, post at its facility in Hartford, Connecticut, copies of the attached notice marked "Appendix." [6] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since December 28, 2000.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C.

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Raymond P. Green
Administrative Law Judge

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APPENDIX
NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT issue warnings to employees who engage in protected concerted activity such as seeking to enforce or raise a claim under a collective bargaining agreement.

WE WILL NOT in any like or related manner interfering with, restraining or coercing employees in the rights guaranteed to them by Section 7 of the Act.

The Champlin Company
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1 Commercial Plaza, Hartford Ct 06103-3599. 860-240-3522, Hours: 9 a.m. to 5:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3528.